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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों के छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than the Administration of Union Territories)

भारत निर्वाचन आयोग,

आदेश

नई दिल्ली, 7 फरवरी, 1994

आ. अ. 30 :—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट बिहार राज्य से लोक सभा के लिए प्रत्यदिष्ट निर्वाचन, 1993 के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्वीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथा दर्शित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है,

और, उक्त अभ्यर्थियों ने सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए न तो कोई कारण ग्रथवा स्पष्टीकरण ही दिया है और उनके द्वारा दिए गए अभ्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है;

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद् के किसी भी सदन के या किसी राज्य/संघ राज्य क्षेत्र की विधान सभा ग्रथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आयोग की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

सारणी

क्र. सं.	निर्वाचन का विवरण	निर्वाचन क्षेत्र की क्र.सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरहेता का कारण
1	2	4	4	5
1.	बिहार राज्य से लोक सभा के लिए प्रत्यादिष्ट निर्वाचन, 1993	35—पटना संसदीय निर्वाचन क्षेत्र	श्री अजीत कुमार आर.एम.एम. कालोनी, पटना।	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे।

1	2	3	4	5
2.	बिहार राज्य से लोकसभा के लिए प्रत्यादिष्ट निर्वाचन 1993.	35-पटना संसदीय निर्वाचन क्षेत्र	श्री अनवर हुसैन नारियल घाट, दानापुर पो.—बीघा, पटना ।	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असमर्थ रहे ।
3.	—वही—	—वही—	मो. अमीन नारियल घाट, दानापुर पो.—बीघा, पटना ।	—वही—
4.	—वही—	—वही—	अणोक सिंह सी. ए. /7, पीपुल्स कोपरेटिव कालोनी, कंकड़ बाग, पटना-20 ।	—वही—
5.	—वही—	—वही—	मो. असलम नारियल घाट, पो.—बीघा, पटना ।	—वही—
6.	—वही—	—वही—	कौशल्या देवी श्रीबर, पो.—गोपालपुर, थाना-नौबतपुर, पटना ।	—वही—
7.	—वही—	—वही—	चन्द्रेश्वर शर्मा ग्राम—बारा, पो.—बेला तराई, जिला पटना ।	—वही—
8.	—वही—	—वही—	श्री चिन्ताहरण प्रसाद, सैदपुर पो.—बांकीपुर, पटना-4	—वही—
9.	—वही—	—वही—	दशरथ पासवान, ग्राम छाटंकी टगरेला, पो.—अमरपुरा, थाना नौबतपुर—पटना ।	—वही—
10.	—वही—	—वही—	दामोदर प्रसाद सिंह, ग्राम व पो.—गहरा रामपुरा, थाना—नौबतपुर, पटना ।	—वही—
11.	—वही—	—वही—	मिथलेश शर्मा ग्राम—चेसी, थाना—नौबतपुर, पटना ।	—वही—
12.	—वही—	—वही—	मो० मुन्ना नारियल घाट, पो.—बीघा, पटना-12	—वही—
13.	—वही—	—वही—	रामकृत सिंह ग्राम—रहीमपुर, पो.—बरसा बाजार, वाया—पुन पुन, पटना ।	—वही—
14.	—वही—	—वही—	सलामुद्दीन, बी. वी. कालेज, पटना-14	—वही—

1	2	3	4	5
15.	बिहार राज्य से लोकसभा के लिए प्रत्यादिष्ट निर्वाचन 1993	35-पटना संसदीय निर्वाचन क्षेत्र	सुरेश चन्द्र शर्मा शाम वभनपुरा, पो. मुबारकपुर, धाना फुलवारी, पटना।	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असमर्थ रहे।
16.	---वही---	---वही---	सुरेश भट्ट विजय मिनेमा, नवादा, बिहार।	---वही---

[सं. 76/बिहार-लो.स./93 (उप)/6712]

आदेश से,
राम किशन, सचिव

ELECTION COMMISSION OF INDIA

ORDER

New Delhi, the 7th February, 1994

O.N. 30.—Whereas the Election Commission of India is satisfied that each of the contesting candidates specified in column 4 of the Table below at the Bye-election to the House of the people from Bihar State, as specified in column 2 and held from the constituency specified in column 3 against his/her name has failed to lodge the account of his/her election expenses as shown in column 5 of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder :

And whereas, the said candidates have not furnished any reason or explanation for the said failure even after due notice by the Election Commission and the Commission is satisfied that they have no good reason or justification for the said failure ;

Now, therefore, in pursuance of section 10-A of the said Act, the Election Commission hereby declares the persons specified in column 4 of the Table below to be disqualified for being chosen, and for being a member of either House of Parliament or the Legislative Assembly or Legislative Council of a State/Union Territory for a period of 3 years from the date of this order :

TABLE

S. No.	Particulars of election	Number and Name of Constituency	Name and Address	Reason of disqualification
1	2	3	4	5
1.	Bye election to Parliamentary Constituency, 1993	35—Patna Parliamentary Constituency	Shri Ajit Kumar, R.M.S. Colony Patna.	Failed to lodge any account of election expenses.
2.	-do-	-do-	Shri Anwar Hussain, Narain Ghat, Danapur, P.O. Digha, Patna.	-do-
3.	-do-	-do-	Md. Amin, Narial Ghat, Danapur, P.O. Diga, Patna.	-do-
4.	-do-	-do-	Shri Ashok Singh, C-A/7 People cooperative Colony Kankarbagh, Patna-20.	-do-
5.	-do-	-do-	Md. Aslam, Narial Ghat, P.O. Digha, Patna.	-do-
6.	-do-	-do-	Smt. Kaushalya Devi Shriber, P.O. Gopalpur, P.S. Naubatpur (Patna)	-do-

1	2	3	4	5
7.	Bye election to Parliamentary Constituency, 1993.	35—Patna Parliamentary Constituency	Shri Chandeshwar Sharma, Village Bara, P.O. Bela Tarari, Patna.	Failed to lodge any account of election expenses.
8.	-do-	-do-	Shri Chinta Haran Prasad, Saidpur, P.O. Bankipur, Patna-4.	-do-
9.	-do-	-do-	Shri Dasrath Paswan, Village-Chhoiki Tagrela, P.O. Amarpura, Thana-Naubatpur, Patna.	-do-
10.	-do-	-do-	Shri Damodar Prasad Singh, Village & P.O. Shahar Rampura, P.O. Naubatpur, Patna.	-do-
11.	-do-	-do-	Shri Mithlesh Sharma, Village Chesi P.O. Chesi P.S. Naubatpur (Patna).	-do-
12.	-do-	-do-	Mohammad Munna, Narialghat, P.O. Digha, District-Patna-12.	-do-
13.	-do-	-do-	Shri Ram Krit Sing, Village Rahimpur, P.O. Parsa Bazar Via-Punpun, Patna.	-do-
14.	-do-	-do-	Shri Salamuddin, B.V. College, Patna-14.	-do-
15.	-do-	-do-	Shri Suresh Chandra Sharma, Village Babhapura, P.O. Mobarakpur P.S. Phulwari (Patna).	-do-
16.	-do-	-do-	Shri Suresh Bhatt, Vijay Cinema, Nawada, Bihar.	-do-

[No. 76/BR-HP/93(Byc)/6712]

By Order,
RAM KISHAN, Secy.

आदेश

नई दिल्ली, 7 मार्च, 1994

आ.प्र. 31 :—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन-क्षेत्र से हुआ है, स्तम्भ (4) में उसके मामले विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्वीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथा वर्णित अपने निर्वाचन व्ययों का लेखा समय के अन्तर्गत और/अथवा अपेक्षित रीति में या विलकुल दाखिल करने में असफल रहा है,

और उक्त अभ्यर्थियों ने सम्यक् सूचना दी जाने पर भी उक्त असफलता के लिए या तो कोई कारण अथवा स्पष्टीकरण नहीं दिया है या उनके द्वारा दिए गए अभ्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है,

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य/संघ राज्यक्षेत्र की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिये आदेश की तारीख से तीन वर्ष की कालावधि के लिए निर्वाह घोषित करता है ।

सारणी

क्र. स.	निर्वाचन का विवरण	निर्वाचन-क्षेत्र की क्र.सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरर्हता का कारण
1	2	3	4	5
1.	तमिलनाडु में लोकसभा के लिए उप-निर्वाचन	22-पलानी संसदीय निर्वाचन-क्षेत्र	श्री के. बाला सुब्रह्मण्यम सुपुत्र टी.एस. कालामगम पिल्लार्ई, 19 ए.एल./13ए त्रिमूलर बीडी, पार्वथी पुरम, मुसीरी-621211 तमिलनाडु	लेखा बिल्कुल दाखिल नहीं किया,
2.	--वही--	--वही--	श्री एन. आदिनारायण सुपुत्र नीलमंगम, 209-मथुरामालिगम कलोनी, पाल्पापट्टी रोड, सिक्कासी, तमिलनाडु ।	--वही--
3.	--वही--	--वही--	श्री पी. अरुमुगम, पुत्र श्री पलानियप्पन, बीरनामपालयम, पो. ग्रा. कगायम वाया पेरियर जिला, तमिलनाडु	--वही--
4.	--वही--	--वही--	श्री पी. कान्नयान, सुपुत्र पी. पेरियासामी, पिल्लार्ई, 2-पेरियर काकोनी, पश्चिम कोट्टर रोड, पोल्लाची, तमिलनाडु ।	--वही--
5.	तमिलनाडु विधानसभा के लिए उप-निर्वाचन 1993	34-रानीपेट विधानसभा निर्वाचन-क्षेत्र	श्री के. अनुमंथा राव 161-पलानीयन्दावर, कोइल स्ट्रीट, आयनपुरम, मद्रास-23, तमिलनाडु ।	--वही--
6.	--वही--	--वही--	श्री के. राजा 2/80, रोड स्ट्रीट, जागीरवाला वानूर, वाया चाक्कारमाल्लोर, आर्कोट तालुक, एनए. अम्बेडकर जिला तमिलनाडु ।	--वही--

1	2	3	4	5
7. तमिलनाडु विधानसभा के लिए उप-निर्वाचन 1993	34-रानीपेट विधानसभा निर्वाचन-क्षेत्र	श्री कन्नियन नं. 1 थापलकारा, अनुमंथा स्ट्रीट, सेट्टथाक्काराकुप्पम, रेडिड्युर पोस्ट, जोलारपेट, थिरुपाथुर तालुक, ए.एन. अम्बेडकर जिला, तमिलनाडु।	लेखा बिल्कुल दाखिल नहीं किया।	
8. --वही--	--वही--	श्री सी.के. गोविन्दन, नं. 9, 5 वीं स्ट्रीट, के.के. नगर, आयनपुरम, मद्रास-23, तमिलनाडु।	--वही--	
9. --वही--	--वही--	श्री डी. पुष्प 3/39, बजनाई कोईल, स्ट्रीट, जागीरवालावनूर ग्रार्कोट तालुक, एन.ए. अम्बेडकर जिला। तमिलनाडु।	--वही--	

[सं. 76/तमिलनाडु/9426752]

आदेश से,

बलवन्त सिंह, सचिव

ORDER

New Delhi, the 7th March, 1994

O.N. 31.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in columns (4) of the Table below at the election specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses within the time and in the manner or has not lodged the account at all as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder ;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice of the Election Commission, after considering the representation made by them, if any, is satisfied that they have no good reason or justification for the said failure ;

Now, therefore, in pursuance of section 10-A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State or Union Territory for a period of 3 years from the date of this order.

TABLE

S. No.	Particulars of election	S.No. & Name of Constituency	Name & Address of contesting candidate	Reason for disqualification
1.	2.	3.	4.	5.
1.	Bye-election to Lok Sabha, 1993 from Tamil Nadu.	22-Palani Parliamentary Constituency.	Shri K. Balasubramaniam, S/o T.S. Kalamegam Pillai, 19A-1/13A, Tirumoolar Veedi, Parvathipuram, Musiri-621211, Tamil Nadu.	Account not lodged at all.
2.	-do-	-do-	Shri N.Adinarayanan, S/o Neelamegam, 209-Muthuramalingam Colony, Pallapatti Road, Sivakasi, Tamil Nadu.	-do-

1	2	3	4	5
3.	By-election to Lok Sabha, 1993 from Tamil Nadu	34-Palain Parliamentary Constituency.	Shri P. Arumugam, S/o Palaniappan, Vecranampalayam P.O., Kangayam Via, Periyar, Distt., Tamil Nadu.	Account not lodged at all.
4.	-do-	-do-	Shri P. Kannaiyan, S/o P. Periyasamy Pillai, 2-Periyar Colony West, Kottur Road, Pollachi, Tamil Nadu.	-do-
5.	By-election to Tamil Nadu Legislative Assembly, 1993	34-Ranipet Assembly Constituency	Shri K. Anumantha Rao, 161-Palaniyandavar Koil Street, Ayanpuram, Madras-23, Tamil Nadu.	-do-
6.	-do-	-do-	Shri K. Raja, 2/80, Road Street, Jagirvalavanoor, Via-Chakkarmallore, Arcot Taluk, N.A. Ambedkar Distt., Tamil Nadu.	-do-
7.	-do-	-do-	Shri Kannaiyan, No. 1, Thapalkara, Anumantha Street, Mettuchakkarakuppam, Reddiyur Post, Jolarpet, Thirupathur Taluk, N.A. Ambedkar Distt., Tamil Nadu.	-do-
8.	-do-	-do-	Shri C.K. Govindan, No. 9, 5th Street, K.K. Nagar, Ayanpuram, Madras-23, Tamil Nadu.	-do-
9.	-do-	-do-	Shri D. Prabu, 3/39, Bajanai Koil Street, Jagirvalavanoor, Arcot Taluk, N.A. Ambedkar Distt., Tamil Nadu.	-do-

[No. 76/T.N./94-6752]

By Order,
BALWANT SINGH, Secy.

आदेश

नई दिल्ली, 7 मार्च, 1994

आ.प्र. 32:—भारत निर्वाचन आयोग का समाधान हो गया है कि मई, 1993 में 4-जालन्धर निर्वाचन क्षेत्र से लोक सभा के लिए उप निर्वाचन लड़ने वाले श्री अजित सिंह निवासी गांव भीला, पोस्ट कंजली, जिला कपूरथला, पंजाब लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्दीन बनाए गए नियमों द्वारा अपेक्षित अपना निर्वाचन व्यय का कोई भी लेखा दाखिल करने में असफल रहे हैं।

और उक्त अभ्यर्थी ने सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण अथवा स्पष्टीकरण नहीं दिया है और न ही निर्वाचन व्ययों का अपना लेखा दाखिल किया है, निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है;

अतः, अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में श्री अजित सिंह को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य-क्षेत्र की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए आदेश की तारीख से तीन वर्ष की कालावधि के लिए निर्वाह घोषित करता है।

[सं. 76/पंजा.-लो.स./94 (उप)/6765]

आदेश में,
घनश्याम खोहर, सचिव

ORDER

New Delhi, the 7th March, 1994

O.N. 32.—Whereas the Election Commission of India is satisfied that Shri Ajit Singh, resident of Village Bhila, Post Office Kanjli, District Kapurthala, Punjab, who contested the bye-election to the House of the People from 4-Jullundhar Constituency held in May, 1993 has failed to lodge any account of his election expenses, as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas, the said candidate has neither furnished any reason or explanation for the said failure even after due notice nor filed his account of election expenses, and the Election Commission is satisfied that he has no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10-A of the said Act, the Election Commission hereby declares Shri Ajit Singh, to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State/Union Territory for a period of three years from the date of this order.

[No. 76/PB-HP/94 (Bye)/6765]

By Order,
GHANSHYAM KHOHAR, Secy.

नई दिल्ली, 17 मार्च, 1994

आ.प्र. 33:—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1992 की निर्वाचन अर्जी

सं. 14 में चण्डीगढ़ स्थित पंजाब और हरियाणा के उच्च न्यायालय के तारीख 24 जनवरी, 1994 का निर्णय, एतद्द्वारा प्रकाशित करता है।

[सं. 82/पंजा.-लो.स./1492]

आदेश से,
घनश्याम खोहर, सचिव

New Delhi, the 17th March, 1994

O.N. 33.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment dated the 24-1-1994, of the High Court of Punjab and Haryana at Chandigarh in Election Petition No. 14 of 1992.

[No. 82/PB-HP/14/92]

By Order,
GHANSHYAM KHOHAR, Secy.

IN THE HIGH COURT OF PUNJAB AND
HARYANA AT CHANDIGARH

CIVIL MISC. SIDE

Election Petition No. 14 of 1992

Shri Santokh Singh son of Shri Dilip Singh resident of V & P.O. Dharowali, Tehsil Batala, District Gurdaspur.

New resident of M.L.A. Flats No 27, Sector-3,
Chandigarh.

..Petitioner.

Versus

1. Sh. Mohan Singh s/o Kansa Singh
resident of Village Chok rainwala
P.O. Jalalabad West, District
Ferozepur.
2. Shri Anish Kumar S/o Fateh Chand
resident of Juneja Market, Jalalabad West,
Distt. Ferozepur.
3. Sh. Surjeet Kumar s/o Sopat Ram
resident of VPO Kethera, Tehsil Fazilka,
District Ferozepur.
4. Sh. Harpal Singh s/o Karam Singh,
resident of Inside Bagdadi Gate,
Ferozepur City.
5. Sh. Daulat Ram s/o Ram Karan,
resident of Village Bishanpura P.O. Sitro Majra,
District Ferozepur.
6. Shri Nasib Singh s/o Lal Singh,
resident of Kothi No. 4. Sector 18-A,
Chadnigarh.
7. Sh. Mohan Singh s/o Iqbal Singh,
resident of Village Alla Dutta,
District Ferozepur.
8. Shri Lakhmir Singh s/o Deva Singh,
resident of House No. 7665, Prem Nagar,
Abohar.

.....Respondents.

Election petition under Section 81 read with Section 100 and 101 of the Representation of People Act, 1957, praying that:

- (a) The recount of the ballot paper may kindly be ordered.
- (b) That the election of the Respondent No. 1 Shri Mohan Singh to the Lok Sabha be declared void.
- (c) That the petitioner Shri Santokh Singh be declared duly elected for the House of People from the Ferozepur Parliamentary Constituency.

- (d) That the cost of petition be awarded.
Dated the 24th January, 1994

PRESENT :

THE HON'BLE MR. JUSTICE JAWAHAR LAL GUPTA

For the Petitioner : Mr. H. S. Mattewal Senior Advocate with Mr. Sukhoir Singh, Advocate

For the Respondents : Dr. B. L. Wadhwa, Advocate with Dr. M. S. Rahi, Advocate.

JUDGMENT.....

E.P. No. 14 of 1992

JAWAHAR LAL GUPTA, J.

JUDGMENT

The election to the 13-Ferozepur Parliamentary Constituency was held in February, 1992. The Petitioner lost the election to Mr. Mohan Singh, respondent No. 1 by a margin of 1296 votes. He has now questioned the election of the respondent through this election petition.

The petitioner avers that, he was a candidate of the Congress (I) Party. The polling took place on February 19, 1992, and the counting of the ballot papers was done on February 20, 1992. A total of 9 candidates had contested the election. The result was declared on February 21, 1992. The various candidates polled the votes as under :—

- | | |
|---|----------|
| 1. Sh. Santokh Singh (petitioner), Cong. (I), | 1,49,607 |
| 2. Sh. Mohan Singh s/o Kansa Singh, BSP | 1,50,903 |
| 3. Sh. Anish Kumar, Janta Dal | 9,519 |
| 4. Sh. Surjit Kumar, BJP | 92,401 |
| 5. Sh. Lakhmir Singh Sad (Kabul) | 19,791 |
| 6. Sh. H. S. Bhullar, Independent | 7,867 |
| 7. Sh. Daulat Ram, Independent | 1,315 |
| 8. Sh. Nasib Singh, Independent | 1,740 |
| 9. Sh. Mohan Singh s/o Iqbal Singh, (Independent) | 1,424 |

The petitioner avers that Mr. Nasib Singh, a former Congress man who "had remained as a Deputy Minister and Deputy Speaker in the Giani Zail Singh's ministry from 1972—1977 decided to withdraw the candidature from the Ferozepur Lok Sabha seat". He had given a notice of withdrawal dated February 3, 1992, to the Returning Officer. He had authorised his proposer Mr. Surinder Kumar to deliver the notice of withdrawal. The notice and the authorisation "were handwritten by Shri Nasib Singh himself and handed over to Mr. Surinder Kumar, proposer of Nasib Singh on 5-2-1992." These were delivered to Mr. Suresh Kumar, Returning Officer of the Ferozepur Parliamentary Constituency on 5-2-1992 which was the last date of withdrawal at 11.30 A.M. The Returning Officer raised an objection that the notice of withdrawal was not on the prescribed form and returned it to Mr. Surinder Kumar. There upon, Mr. Surinder Kumar took the printed withdrawal form, filled it and delivered it there and then to the Returning Officer at 12.10 A.M. "along with the application of withdrawal of Shri Nasib Singh and authorisation". The Returning Officer, however, declined the request of Mr. Nasib Singh in violation of law. There upon, Mr. Nasib Singh sent a registered notice "to the Chief Election Commissioner and Chief Electoral Officer, Punjab, bringing to his notice the said act of the Returning Officer. ———. The notice of withdrawal was in his handwriting and contained all necessary particulars as required under section 37 of the Representation of People Act. He also asked the Chief Electoral Commissioner to delete his name from the list of contesting candidates. "Mr. Nasib Singh did not campaign or canvass and in the return submitted by him only an expenditure of Rs. 501 was shown. Out of this Rs. 1 had been spent on the nomination papers and Rs. 500 had been deposited as security. According to the petitioner, Mr. Nasib Singh had polled 1740 votes. If the request of Mr. Nasib Singh for withdrawal of candidature had been accepted, these 1740 votes would have been polled 716 GI94.—2.

in favour of the petitioner and the result of election was thus materially affected due to the improper acceptance of his nomination paper.

The petitioner also avers that the Fazilka Assembly Constituency is a part of the 13-Ferozepur Parliamentary Constituency. The counting of votes for the Fazilka Segment of the 13-Ferozepur Parliamentary Constituency and the Fazilka Assembly Constituency was held at the Block Development Office, Fazilka. Mr. Mangat Ram Aggarwal, Sub-Divisional Magistrate was the Returning Officer for the Assembly constituency and the Assistant Returning Officer for the Parliamentary constituency. After the second round of counting, the Returning Officer stopped conveying the round-wise position of votes to the Returning Officer. The petitioner avers that he was sitting in the office of the Returning Officer and asked him about the result from the Fazilka segment. He was informed "that there was a dispute over 1000 votes." His son Mr. Inderjit Singh got a telephone call from Mr. Rajinder Singh Brar, who informed him that "during counting a thousand votes have been found in excess of the votes actually polled and the objection was raised by him (Rajinder Singh Brar) before Shri Mangat Ram Aggarwal and requested to stop the counting till total of votes tallied. Assistant Returning Officer did not pay any heed to the request. Then Inderjit Singh informed these facts to the petitioner. Thereupon, Mr. Gurjeet Singh, election agent of the petitioner went to Fazilka to find out the exact situation. He reached the place of counting at about 2-00 A.M. on February 21, 1992. There, Mr. Rajinder Singh Brar met him and conveyed that the number of votes taken out from the ballot boxes did not tally with those actually polled. Mr. Brar and other counting agents also complained that the distance between "sitting arrangement and the counting tables and barricade was about 6 feet——. By standing at barricade the counting agents could not see and watch the ballot papers properly——". Shri Gurjeet Singh moved an application to the Assistant Returning Officer that these votes should not be counted but he refused to entertain the application. These 1000 votes remained in excess till the counting was completed. The Assistant Returning Officer, without ascertaining in whose favour these votes purported to have been polled "mixed with the other ballot papers and counted them." After spending about 1 1/2 hours at the B.D.O. Office, Fazilka. Mr. Gurjeet Singh left for Ferozepur "to bring this fact to the notice of the petitioner ———". Thereupon, he petitioner gave telegrams and phoned Shri B. C. Gupta, Commissioner, Ferozepur. He gave a ring to the Chief Election Commissioner, New Delhi which was attended by Shri D. S. Bagga, Deputy Chief Election Commissioner from his Election Office. He was assured that the matter will be looked into. The petitioner also gave a ring to Shri R. C. Sharma, Joint Electoral Officer, Punjab. In spite of the assurance, no action was initiated. Then the petitioner asked one of his workers to write an application to the Returning Officer. It was signed and submitted by the petitioner to Shri Suresh Kumar, the Returning Officer at his office, who illegally rejected it. The petitioner also gave representation to Mr. Joshi, Central Observer in the Office of the Deputy Commissioner. He also sent telegrams to the Chief Election Commissioner, New Delhi at about 7-15 A.M. on February 21, 1992. from Ferozepur.

The petitioner further avers that the Jalalabad Assembly Constituency is also a part of the 13-Ferozepur Parliamentary Constituency. The counting was held on February 20, 1992, at Govt. Senior Secondary School, near S.D.M's Courts, Fazilka. Mr. H R Prabhakar was the Returning Officer. The petitioner had appointed eight counting agents. On account of the distance between the counting tables and the seat provided to the Counting Agents and the barricade, it was not possible to see the counting done by the staff even by standing at the barricade. The disputed votes were sent to the Assistant Returning Officer for decision. Mr. Paramjit Singh was sitting with the Assistant Returning Officer along with the counting agents of other candidates to watch and discuss "about disputed votes". A number of ballot papers (specified in the petition which had been cast in favour of the petitioner were rejected merely because these were slightly smudged or carried the 'ink mark' by the Assistant Returning Officer. Similarly, about 80 votes in the second round and 100 votes in the fifth and 20 in the sixth round which were clearly

marked in favour of the petitioner were rejected, as the mark of the rubber stamp was slightly touching the line of the column toward the side of the petitioner. However, about 125 votes which were carrying mark of rubber stamp on two candidates, one of which was against the election symbol of respondent No. 1, were counted in favour of the returned candidate. Shri Paramjit Singh raised an objection before Assistant Returning Officer, Jalalabad, which was rejected.

On these premises, the petitioner has challenged the election of respondent No. 1 and prayed that it be declared void.

In spite of the service of notice on all the respondents, appearance has been put in by respondents Nos. 1 and 6 only. The remaining respondents viz, respondents Nos. 2 to 5, 7 and 8 did not put in appearance. Consequently, ex-parte proceedings were taken against them. The remaining respondents viz, respondent No. 1 and 6 have filed their respective written statements. Respondent No. 6 (Mr. Nasib Singh) has broadly admitted the various averments made in the petition. So far as respondent No. 1 is concerned, it has been inter-alia averred that Shri Nasib Singh was a candidate of the Janata Dal in the Lok Sabha elections which were to be held in June, 1991, and had been denotified. He had left the Congress party more than a decade ago and that the result of the election has not been affected due to the acceptance of his nomination papers. It has also been stated that the notice of withdrawal was not as per the provisions of rule 9 of the conduct of Election Rules, 1961, and the request had been rejected by the Returning Officer. While admitting that respondent No. 6 had polled 1740 votes, it has been averred that "it is a mere conjecture of the petitioner that the votes polled in favour of respondent No. 6 might have been polled in his favour, if Nasib Singh, respondent No. 6, would have been allowed to withdraw his nomination." It has also been averred that Shri Anish Kumar, respondent No. 2 was a candidate of Janata Dal and he had polled 9519 votes and votes polled in favour of respondent No. 6, might have gone in favour of a person who was a candidate of the same party or might have gone in favour of other persons including respondent No. 1. It is the case of the respondent that "the acceptance of Shri Nasib Singh's nomination papers has not materially affected the election of any of the respondents including respondent No. 1 in any way. "It has also been averred that no objection was raised by any one by the time the votes were counted and result declared". Similarly, it has been averred that no objection, as alleged in the petition, raised before the Assistant Returning Officer, Jalalabad. It has been pleaded that there is no ground on the basis of which election of respondent No. 1 may be liable to be declared void. On these premises, it has been prayed that the election petition be dismissed with 'special exemplary costs'. The petitioner has filed a replication to the written statement filed by respondent No. 1 and reiterated the averments made in the petition, and controverted those made in the written statement.

On the pleadings of the parties, the following issues were framed :—

1. Whether the request of Mr. Nasib Singh for withdrawal of his candidature was illegally declined by the Returning Officer and did it materially affect the election of respondent No. 1 ? Opp.
2. Whether one thousand excess ballot papers in addition to those actually polled were found in the ballot boxes relating to the Fazilka Assembly Segment of the Parliamentary Constituency in the election ? Opp.
3. Whether the votes as mentioned in paragraph 16 of the petition were wrongly rejected or considered to have been polled in favour of respondent No. 1 ? Opp.
4. Relief, if any, which can be granted to the petitioner ?

The parties have led evidence in support of their respective claims. The petitioner besides appearing himself as PW-1 has produced 14 other witnesses. Besides the oral evidence, the petitioner has also produced 6 documents viz, Exs. PW 2/1 and PW 2/1-A to PW-2/5. Similarly, the respondent

No. 1 besides himself appearing as PW-1 has produced 15 other witnesses. He has also produced 8 documents which have been taken on record as Exs. RW-15/1 to RW-15/8. Reference to the oral and documentary evidence in so far as it is relevant for the decision of the issues mentioned above, shall be made at the appropriate stage.

Issue No. 1—The petitioner asserts that the request of Mr. Nasib Singh for withdrawal of his candidature had been illegally declined by the Returning Officer and it materially affected the result of the election. Is it so ?

This issue raises two question—(1) whether the request of Mr. Nasib Singh for withdrawal of his candidature was illegally declined and (2) did it materially affect the result of the election ? It is undoubtedly correct that unless the result of the election is found to have been materially affected, the answer to the first question would be of no consequence. However, since the learned counsel for the parties have raised and argued this matter, it would be proper to consider it. First, the position of law.

The counsel for the parties have referred to the provisions of section 37 of the Representation of the People Act, 1951, (hereinafter referred to as the Act) and rule 9 of the Conduct of Elections Rules, 1961 (hereinafter referred to as the Rules). These may be notices.

"Section 37. Withdrawal of candidature—(1) Any candidate may withdraw his candidature by a notice in writing which shall contain such particulars as may be prescribed and shall be subscribed by him and delivered before three O'clock in the afternoon on the day fixed under clause (c) of section 30 to the returning officer either by such candidate in person or by his proposer, or election agent who has been authorised in this behalf in writing by such candidate.

- (2) No person who has given a notice of withdrawal of his candidature under sub-section (1) shall be allowed to cancel the notice.
- (3) The returning officer shall, on being satisfied as to the genuineness of a notice of withdrawal and the identity of the person delivering it under sub-section (1), cause the notice to be affixed in some conspicuous place in his office.

Rule 9. Notice of withdrawal of candidature :—

- (1) A notice of withdrawal of candidature under sub-section (1) of section 37 shall be in Form 5 and shall contain the particulars set out therein; and on receipt of such notice, the returning officer shall note thereon the date and time at which it was delivered.
- (2) The notice under sub-section (3) of section 37 shall be in form 6."

A perusal of section 37 of the Act as reproduced above shows that a candidate can withdraw from the contest by notice in writing. This notice must contain the prescribed particulars. It should be subscribed by the candidate and has to be delivered before three O'clock on the day fixed for the withdrawal of candidature, either personally or by the proposer/election agent who has been authorised in this behalf by the candidate. By virtue of clause (2), the notice of withdrawal is irrevocable. Furthermore, if the Returning Officer is satisfied regarding the genuineness of the notice of withdrawal and the identity of the person delivering it, then he is required to cause the notice to be affixed in some conspicuous place in his office. Moreover, the particulars which have to be mentioned in the notice are prescribed in Rule 9. A perusal of this rule as quoted above shows that the notice of withdrawal has to be in Form 5. This form reads as under :—

FORM 5

[See rule 9(1)]

Notice of withdrawal of Candidature Election to the—
The Returning Officer,

I, _____ a candidate validly nominated at the above election do hereby give notice that I withdraw my candidature.

Place _____

Date _____

Signature of validly nominated candidates.

This notice was delivered to me at my office at _____ (hour) on _____ (date) by _____ (name), the _____

Date _____ Returning Officer

Receipt for notice of withdrawal. (To be handed over to the person delivering to the notice).

The notice of withdrawal of candidature by _____ a validly nominated candidate at the election to the _____ was delivered to me by the _____ at my office at _____ (hour) on _____ (date).

Date _____ Returning Officer."

A perusal of the above form shows that the notice has to be given to the Returning Officer. The candidate has to indicate the constituency from which he is withdrawing his candidature. He has also to indicate his name and sign the notice of withdrawal. The place and date on which he subscribes the notice have also to be indicated. The Returning Officer has to note down the date and time of the delivery of the notice and the particulars of the proposer or election agent by whom the notice has been delivered.

On a combined reading of section 37 and Rule 9, it appears that it is not the mandate of law that the notice of withdrawal of candidature has to be given only on a printed proforma. So long as the prescribed particulars are given and the notice is delivered to the Returning Officer, the request for withdrawal of candidature cannot be declined only on the ground that the notice is not on the printed proforma.

What is the position in the present case? Mr. Nasib Singh had filed his nomination paper Ex. PW-2/1 on January 30, 1992. It was received by the Returning Office on that date at 12-20 P.M. It was scrutinized on February 3, 1992 at 11 A.M. No objection having been raised, and the nomination papers having been found to be in order, the Returning Officer had accepted it. He had also subscribed to the oath vide Ex. PW-2/1-A as contemplated under Article 84-A. The next document is Ex. PW-2/2. This is the notice of withdrawal given by Mr. Nasib Singh. It reads as under :—

"To

The Returning Officer,
13-Ferozepore,
Lok Sabha Seat.

Subject :—Notice of withdrawal of candidature

Sir,

I Nasib Singh s/o S. Lal Singh candidate from 13-Ferozepore Lok Sabha seat in the election to be held on 19-2-92 hereby voluntarily and of my free consent withdraw my candidature from the aforesaid Lok Sabha constituency and deliver this notice of withdrawal of my candidature through my proposer who is duly authorised in writing by me to do so.

3-2-92

Yours faithfully,
Sd/- in Punjabi

Nasib Singh s/o S. Lal Singh,
r/o 14/18A, Sector, Chandigarh."

Along with it, he gave a letter of authorisation (Ex. PW-2/3) in favour of Mr. Surinder Kumar his proposer. Ex. PW-2/4 is the printed withdrawal form subscribed by the proposer on which the following note has been given :—

"This withdrawal slip is coupled with the written consent and authority letter of Sh. Nasib Singh can-

didate bearing his signatures thereon. (Plain papers in his hand).

Sd/- proposer
5-2-92 at 12-05 P.M."

Mr. Mattewal, learned counsel for the petitioner contends that the notice of withdrawal as well as the authorisation letter had been written by Mr. Nasib Singh in his own hand. Dr. Wadhwa, learned counsel for the respondent controverted this contention. What is the correct position?

In para 7 of the petition, it has been categorically averred that "the notices and authorisation of withdrawal were handwritten by Shri Nasib Singh himself and were handed over to Mr. Surinder Kumar, proposer of Nasib Singh on 5-2-92." In paragraph 18(a) it has been again averred that "Shri Nasib Singh respondent No. 6 has written and signed the notice of withdrawal of his candidature to be given to the Returning Officer. He has also authorised Shri Surinder Kumar his proposer to deliver the notice of withdrawal of his candidature from the Ferozepur Parliamentary seat. Both, the notice of withdrawal and authorisation were handwritten and signed by Shri Nasib Singh and were handed over to Shri Surinder Kumar, the proposer, who submitted the authorisation and notice of withdrawal to Shri Suresh Kumar, the Returning Officer at 11-30 on 5-2-1992." In reply, it has undoubtedly been stated that "para No. 7 is wrong and denied". However, while the other averments made in paragraph 7 have been specifically adverted to and answered, the averment that the notice and authorisation "were handwritten by Shri Nasib Singh himself—" has not been specifically denied. Similar is the position in respect of the reply to paragraph 18(a). In fact, it has only been averred that the notice given by respondent No. 6 "was not as per the provisions of rules and law of the People Representation Act, 1951". So far as respondent No. 6 is concerned, he has admitted the contents of paras Nos. 7 and 18(a). The petitioner when he appeared as PW1 has broadly supported his averment in the petition. However, PW-11 Mr. Surinder Kumar Bajaj, who is a practising Advocate and the proposer of Mr. Nasib Singh has categorically stated that he had seen Mr. Nasib Singh write and sign documents: that Ex. PW-2/2 which is the notice of withdrawal and Ex. PW-2/3, the letter of authorisation, were written and signed by Mr. Nasib Singh. He has further stated that these documents were sent to him by Mr. Gill and he had presented these to the Returning Officer. Initially, he had also stated that the document which has been taken on record as Ex. PW-2/4 has been signed by Mr. Gill. However, in his examination-in-chief itself, the witness had clarified that documents at Exs. PW-2/2 and PW-2/3 had been sent to him by Mr. Gill and that "it was at the asking of the Returning Officer that he "had written and presented the document at Ex. PW-2/4" and that he had done so as he was "the proposer of Mr. Nasib Singh Gill." He has categorically stated that when the Returning Officer had insisted that the request for withdrawal should be on the prescribed proforma, he had filled up the form and presented it to him and that this document was Ex. PW-2/4. In cross-examination, he reiterated this position. He admitted that these documents were not written or signed in his presence but stated that these were actually written by Mr. Nasib Singh Gill. He denied that suggestion that the documents had not been written or signed by Mr. Nasib Singh and that these had been written by some body else. He has also stated that Mr. Gill had told him on telephone "that the prescribed proforma in Gurumukhi script was not available in Chandigarh and that he had sent the request in his own hand for being presented to the Returning Officer." On the other hand, the respondent Dr. Mohan Singh who has appeared as RW-1 has not even remotely suggested that the documents at Exs. PW-2/2 and PW-2/3 were not in the hand of or had not been signed by Mr. Nasib Singh Gill.

On a cumulative consideration of the pleadings of the parties and the evidence led by them, it appears that Mr. Nasib Singh Gill had sent the request for withdrawal of his candidature vide Ex. PW-2/2 along with the letter of authorisation Ex. PW-2/3. The statement of Mr. Surinder Kumar appears to be worthy of credence and nothing has been pointed out to show that the documents had not been written or signed by Mr. Nasib Singh Gill. It is no doubt correct that during the course of cross-examination, a suggestion was put to him that the method of writing 'Ba' (ब) was different,

but it appears to be only a normal variation in writing and does not indicate that the document did not bear the signatures of Mr. Nasib Singh. It is true that the petitioner has not produced Mr. Nasib Singh as a witness. However, he (Mr. Nasib Singh) has filed his written statement and has admitted that he had sent written request and letter of authorisation of withdrawal of his candidature. Taking into consideration the totality of evidence on record, it appears that these two documents were duly signed and subscribed by Mr. Nasib Singh. The question that, however, arises is—Do these documents conform to the requirements of section 37 and rule 9?

A perusal of the notice of withdrawal Ex. PW-2/2 as reproduced above shows that it has been addressed to the Returning Officer for 13-Ferozepur Lok Sabha seat. It delineates all the information as prescribed under rule 9. It is duly subscribed by the candidate. In my opinion, it conforms to the requirements of the Act. It is not laid down anywhere that the request for withdrawal can be submitted only on a printed proforma. That being so, a candidate is entitled to submit the request for withdrawal of his candidature in his own hand. In the present case, respondent No. 6 had duly submitted his request through his proposer and had also given a letter of authorisation. Exs. PW-2/2 and PW-2/3 were thus in conformity with the provisions of section 37 and rule 9.

Under section 37(3) of the Act, the Returning Officer has to satisfy himself "as to the genuineness of a notice of withdrawal and the identity of the person delivering it". So far as the identity of Mr. Surinder is concerned, the Returning Officer has not expressed any doubt. However, while rejecting the request vide order dated February 5, 1992, (Ex. PW-2/5), he has observed that "the withdrawal form is without the signatures of the validly nominated candidate." When it was pointed out that "consent and the authority letter of the validly nominated candidate on plain papers were given to him," it was observed that "he can only deliver a withdrawal form which has to be duly identified by a validly nominated candidate". Accordingly, it was held that the request for withdrawal was not in accordance with the provisions of law. This view of the Returning Officer does not appear to be correct. As already observed, it is not the requirement of law that the notice of withdrawal can be submitted only on the proforma got printed by the Returning Officer. So long as the prescribed particulars are given, the request can be made on the printed proforma or on a type written document or even by a hand written document. The only requirement of law is that the requisite particulars should be supplied and the document should be subscribed by the candidate. The Returning Officer has not suspected the genuineness of the notice or the identity of the person delivering it. In such a situation he could not have declined to accept the request for withdrawal of candidature submitted by respondent No. 6. His action was, thus, in violation of the provisions of Section 37 and rule 9.

The next question that arises is—did the order of the Returning Officer materially affect the result of the election in so far as it concerns the returned candidate? Mr. Matwal, learned counsel for the petitioner, has contended that the petitioner had lost by a narrow margin of 1296 votes, while respondent No. 6 whose request for withdrawal had been illegally rejected, and polled 1740 votes. He has contended that in view of the provisions of Section 100(1)(d)(i) to (iv) of the Act, the election of respondent No. 1 is liable to be set aside. He has relied upon the statements of the petitioner and PWs 3 to 9 to contend that the result of the election had been materially affected. He has referred to the decision of their Lordships of the Supreme Court in *Chhedi Ram Vs. Jhilmit Ram* and others AIR 1984 SC 146 in this behalf. On the other hand, Dr. Wadhwa, learned counsel for respondent No. 1 has contended that even if it is assumed that the request for withdrawal made by Mr. Nasib Singh had been wrongly declined, it cannot be said that there was an improper acceptance of a nomination of Mr. Nasib Singh as contemplated under section 100(1)(d)(i). He has further submitted that on the evidence on record, it cannot be said that the result of the election, in so far as the returned candidate is concerned, has been materially affected. He placed firm reliance on the decision

of the Supreme Court in *Shiv Charan Singh son of Angad Singh Vs. Chandra Bhan Singh S/o Mahavir Singh and others* 1988(2) SCC 12.

Section 100 of the Act enumerates the grounds on which the High Court can declare the election of a returned candidate to be void. Clause (1) which is relevant for the decision of the present case provides as under:—

"100. Grounds for declaring election to be void (1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

- (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or
- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
- (c) that any nomination has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—
 - (i) by the improper acceptance or any nomination, or
 - (ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent, or
 - (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
 - (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void."

A perusal of the above provision shows that in a case where the High Court finds that a candidate was not qualified, or that a corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or a nomination paper has been improperly rejected the election can be declared void without anything more. However, in the cases covered by sub-clause (d) it is not only necessary to prove one or more of the grounds mentioned in clauses (i) to (iv), but also that in so far as the returned candidate is concerned, the result has been materially affected.

So far as the present case is concerned, learned counsel for the petitioner has contended that the action of the Returning Officer in refusing to accept the request of Mr. Nasib Singh for withdrawal of his candidature amounted to improper acceptance of his nomination paper. Dr. Wadhwa, however, submitted that nomination of Mr. Nasib Singh had been properly accepted. He has consequently contended that the case was not covered by the first ground mentioned in sub-clause (d). He, however, conceded that such a case would be covered by ground (iv). Accordingly, in so far as the present case is concerned, it is really not necessary to determine as to whether or not the order of the Returning Officer amounted to an improper acceptance of nomination. It having been held that the Returning Officer had erred in declining the request of Mr. Nasib Singh for withdrawal of his candidature, the short question that arises is—has the result of election in so far as it concerns respondent No. 1 been materially affected?

The pleaded case of the petitioner is that "if the request of Shri Nasib Singh for withdrawal of candidature had been accepted, these 1740 votes would have been polled to the petitioner". He has reiterated this position during the courses of his statement. In the same vein, a number of witnesses viz. PW-3 to PW-9 have appeared and stated that they have voted for Mr. Nasib Singh Gill as he was close to them and in case his name had not been printed on the ballot paper, they would have voted for Mr. Santokh Singh Randhawa, the petitioner. Almost each one of them professed to be a supporter of the Congress party and

yet they claim to have voted for Mr. Nasib Singh on account of the past favours rendered by him or their family connections. Some of the witnesses like PW-8, Mr. Karam Singh, an Advocate have stated that "I and my friends would have voted for Mr. Santokh Singh Randhawa, the petitioner". On the other hand, respondent No. 1 during the course of his statement has stated that in case Mr. Gill had not been a candidate, the votes would have gone to Mr. Anish Kumar as he was the official candidate of the Janata Dal. To a similar effect are the statements of a number of witnesses produced by the respondent. To illustrate, it has been stated by Mr. Milakh Raj, Advocate, RW-11, that in his opinion "the votes which were polled in favour of Mr. Nasib Singh would have gone to some independent candidate, in case he was not to contest the election".

On a consideration of the pleadings and the evidence produced by the petitioner, he undoubtedly appears to entertain the thought that in case the request of Mr. Nasib Singh had been accepted and he had been allowed to withdraw his candidature, the 1740 votes polled in his favour would have gone to him. At best, this is merely a conjecture. It is his surmise. It is a pure guess. The evidence on record is highly presumptive. It does not permit any clear inference.

Firstly, except the ipse dixit of the witnesses, there is nothing on record to show that they had actually voted for Mr. Nasib Singh Gill. Even it is assumed that they did as they profess to have, it cannot be said with certainty that in case Mr. Nasib Singh Gill had not been contesting the election, they would have only voted for Mr. Santokh Singh Randhawa, the petitioner. It is equally possible that they may have voted for a candidate sponsored by the Janata Dal as Mr. Gill had admittedly been nominated by that party in the elections which were initially scheduled to be held in July, 1991. They could have also voted for an independent candidate at Mr. Gill had admittedly contested as such. One is left to guess. It is impossible to say even with a reasonable amount of certainty that they would have voted only for the Congress. This being so, it is impossible to hold that the result of the election had been materially affected in so far as the returned candidate is concerned.

Mr. Matteval has placed strong reliance on the decision of the Supreme Court in Chhedi Ram's case (supra). In this case, it was inter alia held that "if the number of votes secured by the candidate whose nomination was improperly accepted is disproportionately large as compared with the difference between the votes secured by the successful candidate and the candidate securing the next highest number of votes and if the votes secured by the candidate whose nomination was improperly accepted bears a fairly high proportion to the votes secured by the successful candidate, the reasonable possibility is that the result of the election has been materially affected and it would have to be concluded that fact was proved." Mr. Matteval has placed strong reliance on these observations.

However, the facts in this case deserve to be noticed. Moti Ram, a Kahar by caste, contested election to the Uttar Pradesh Vidhan Sabha from the Jakhsue Constituency which was reserved for the members of the Scheduled Castes. He secured 6710 votes. However, Jhilmit Ram who was actually elected had secured 17822 votes. Another candidate Chhedi Ram who was the 'runner-up' had secured 17449 votes. Thus, there was a difference of only 373 votes. The Election Tribunal found that the nomination of Moti Ram had been improperly accepted. In spite of that, the Tribunal did not set aside the election of Jhilmit Ram "as it took the view that the result of the election had not been shown to have been materially affected as a result of the improper acceptance of the nomination". On appeal, their Lordships found that "the candidate whose nomination was improperly accepted had obtained—almost twenty times the difference between the votes secured by the successful candidate and the candidates securing the next highest number of votes——. The number of votes secured by the candidate whose nomination was improperly accepted bore high proportion to the number of votes secured by the successful candidate——. Surely, in that situation, the result of the election can safely be said to have been affected. This case is not at par with the one in hand. While in Chhedi Ram's case (supra) the votes

polled by Moti Ram whose nomination had been improperly accepted, was twenty times the difference between the votes secured by the successful candidate and the candidate who was the 'runner-up', the position in the present case is entirely different. Mr. Nasib Singh had secured merely 1740 votes while the difference of votes between the successful candidate and the 'runner-up' was 126. Thus, even the number of votes secured by Mr. Nasib Singh is less than 1/75 of the votes polled by the successful candidate. In this situation, it cannot be said that the rule enunciated in the Chhedi Ram's case (supra) is attracted in the present case. Furthermore, Chhedi Ram's case (supra) has been considered by their Lordships of the Supreme Court in Shiv Charan Singh's case. The case of Chhedi Ram was held to have been decided on its own facts. After noticing various earlier decisions, their Lordships have inter-alia observed as under :—

"In the absence of the positive proof of material effect on the result of the election of the returned candidate, the election must be allowed to stand and the court should not interfere with the election on speculation and conjectures, relating to the manner in which the wasted votes would have been distributed amongst the remaining validly nominated candidates. Electors exercise their right of vote on various unpredictable considerations and the courts are ill-equipped to speculate, guess or forecast by proceeding on probabilities or drawing inference regarding the conduct of thousands of votes. Any speculation made by the court in this respect would be arbitrary and contrary to the democratic principles."

It is, thus, clear that the court cannot proceed on 'probabilities'. It cannot 'speculate', 'guess' or 'forecast'. In other words, the petitioner or the person who seeks to void an election must prove how all the 'wasted votes' would have been distributed amongst the validly nominated candidates. This is undoubtedly an impossible task. However, that is what the law requires. Without such clear proof, the election cannot be set aside.

In the present case, there is nothing on record to show that the petitioner would have got at least 1297 votes out of the 1740 votes polled in favour of Mr. Nasib Singh and that the remaining votes would have gone only to candidates other than respondent No. 1. The petitioner has failed to prove by any positive or reliable evidence that the result of the election of the returned candidate was materially affected by the order passed by the Returning Officer. Accordingly, it is held that the result of the election of respondent No. 1 was not materially affected. Issue No. 1 is, therefore, decided against the petitioner.

Issue No. 2 :

The petitioner alleges that in the Fazilka segment of the constituency, 1000 votes were found to be in excess of those actually polled. The number of votes taken out from the ballot boxes and those actually polled did not tally. Respondent No. 1 controverts this. What is the evidence ?

Reliance on behalf of the petitioner has been placed on the oral testimony of PW-1, (the petitioner himself), of Gurbaj Singh PW-10 who was the counting agent of the petitioner, Rajinder Singh Brar PW-13 another counting agent of the petitioner, Inderjit Singh PW-16, the petitioner's son and Mr. Gurjit Singh, an Advocate PW-17, who was the petitioner's election agent. The petitioner states that he was present before the Returning Officer at Ferozepur where information in respect of counting of votes in each segment was being received. There was delay in respect of information from the Fazilka segment of the constituency. On enquiry from the Returning Officer, he learnt that there was some dispute regarding 1000 excess votes found in the ballot boxes. Even his son Inderjit Singh PW-16 had told him about the information given by Rajinder Singh Brar, PW-13 that 1000 excess votes had been found and that he had objected to the counting being continued. The petitioner states that he had sent Mr. Gurjit Singh PW-17 his election agent to have the counting stopped. Mr. Gurjit Singh informed him that in spite of a written request having been made, the counting had not been stopped.

The petitioner asserts that on coming to know of this, he rang up the Chief Electoral Officer on February 21, 1992 and also sent telegrams to various persons. In cross-examination, he stated that he had submitted a representation to Mr. Joshi RW-16 who had been appointed as an Observer by the Chief Election Commissioner when he was present in the office of the Returning Officer on February 21, 1992. He has admitted that he did not "request Mr. Joshi to conduct an enquiry in my (his) presence at that very moment". He also stated that Mr. Gurjit Singh, his election agent, had submitted a representation to the Assistant Returning Officer who had promised to look into the matter. Mr. Gurbaj Singh, PW-10 who was the counting agent of the petitioner in the Fazilka segment of the constituency has stated that during the course of counting, there was a commotion and it was said that 1000 ballot papers were in excess of those actually polled. The Sub-Divisional Magistrate had got the counting stopped. The Additional Deputy Commissioner had arrived after about one hour when it was decided that the counting must go on. Consequently, the counting was resumed. He has also stated that Mr. Rajinder Singh Brar, another counting agent of Mr. Santokh Singh Randhawa, had complained to the Sub-Divisional Magistrate regarding the excess votes found during the course of counting. Later on, even Mr. Gurjit Singh, the election agent, had "tried to submit a written application to the Returning Officer. This application was not accepted." In cross-examination, the witness admitted that the excess votes were noticed only at the end of the second round of counting. He could not say "as to how the dispute regarding one thousand votes having been found to be in excess had arisen at the end of the second round." He had only heard it. He could not give the exact number of the votes polled so as to show that 1000 ballot papers were actually in excess. He admitted that he had not submitted any complaint in writing. This witness very candidly admitted that he could not even give a rough estimate regarding the votes polled and that he had not made any complaint in writing.

Mr. Rajinder Singh Brar, PW-13, has inter-alia stated that according to the record with the counting staff, a total of 63781 votes had been polled. However, on counting, a total of 64781 ballot papers were found. As such, there was an excess of 1000 ballot papers. He has further stated that before the figures could be reconciled, the actual counting of votes was started. He asked them to stop the counting. He told the S.D.M. that "we will not allow the counting to proceed till the discrepancy regarding 1000 votes was sorted out. We had created a noise as a result of which counting was stopped." He has further stated that he had telephoned Mr. Inderjit Singh, PW-16 and informed him about this. He has also stated that he had even told the Additional Deputy Commissioner who had arrived there that there was discrepancy of about 1000 ballot papers. According to him, Mr. Gurjit Singh who was the election agent of Mr. Santokh Singh Randhawa, had reached the office of the Block Development and Panchayat Officer at about 2 A.M. on February 21, 1992 where the counting was going on. Mr. Gurjit Singh had submitted an application in writing. The Returning Officer had not taken any action on the representation submitted by Mr. Gurjit Singh. In cross-examination, he has admitted that the Returning Officer had told him that after adding up the votes properly, the figure would be reconciled. Consequently, he had not stopped the counting of votes. He has further stated that no receipt was given to Mr. Gurjit Singh for the representation that he had submitted to the S.D.M. who was the Assistant Returning Officer. PW-16 Mr. Inderjit Singh has only deposed regarding the telephonic call from Mr. Brar regarding the discrepancy of 100 votes. He has admitted that he had not gone to Fazilka personally and had made no complaint to any officer in this respect. Mr. Gurjit Singh, an Advocate, who has appeared as PW-17 stated that on the asking of Mr. Inderjit Singh, PW-16, he had seen Mr. Randhawa, who had mentioned that Mr. Rajinder Singh Brar had sent a message on telephone that about 1000 votes had been found in excess. On the asking of Mr. Randhawa he had proceeded to Fazilka to get the counting stopped. Mr. Brar had met him and explained him the whole position. He had then written an application addressed to the Assistant Returning Officer. Mr. M. R. Aggarwal, and given it to him. The officer had read

the application and kept it. In spite of a request the counting was not stopped. He was told that the representation would be decided but the counting should be allowed to continue.

This is the evidence which has been referred to by learned counsel for the petitioner in support of the claim as made in the petition regarding this issue.

To rebut the evidence produced by the petitioner, the respondent has produced Mr. Mangat Ram Aggarwal, Sub-Divisional Magistrate (Assistant Returning Officer) as RW-2, Dr. G. Vajralingam, the then Additional Deputy Commissioner, Ferozepur as RW-14, Mr. Suresh Kumar, the then Deputy Commissioner, Ferozepur as RW-15 and Mr. Ashok Joshi, who had been appointed as an Observer as RW-16. Mr. Mangat Ram Aggarwal, RW-2 has stated that he was posted as Sub-Divisional Magistrate, Fazilka at the time of the elections and was the Assistant Returning Officer for the 13-Ferozepur Parliamentary constituency. The counting had commenced at 8 A.M. on February 20, 1992. It was completed at about 7.30 A.M. on February 21, 1992. He had remained present in the hall during the course of counting which had continued without any break. The representatives of various candidates were present. During the course of counting "no objection was raised by either of the candidates or their representatives regarding the arrangements or the mode of counting. No complaint of any kind was presented to me by any one." He has further stated that Mr. A. Joshi, who had been appointed by the Election Commission was present at the time of the compilation and declaration of the result. Mr. Joshi had visited the place of counting even on February 20, 1992. He had not mentioned about any complaint received by him or by any one else. During cross-examination, he has categorically denied the suggestion that "1000 ballot papers were found in excess of the votes actually polled," or that any "objection was raised by M/s. Gurjit Singh and R. S. Brar, the election and counting agents respectively of the petitioner." He also denied the suggestion that "a written complaint was made to me (him) or to Mr. Joshi or to the Returning Officer". Dr. G. Vajralingam, RW-14 has stated that in February, 1992, he was working as Additional Deputy Commissioner, Ferozepur and in this capacity, he had to work as Assistant Returning Officer, in the election to the 13-Ferozepur Parliamentary Constituency. In exercise of his duties, he had done the work of assigning election duties to various persons and posting them at different places. He had also reviewed the election arrangements. He had visited the places where counting of votes was being done and had gone to Fazilka. During the course of his visits to Abohar and Fazilka "he did not receive any complaint, either in writing or otherwise". In cross-examination, he has mentioned that the Returning Officer had conveyed to him that counting process was going on at a slow pace at Fazilka and that he should, therefore, proceed to Fazilka. On reaching Fazilka, he had enquired from the Sub-Divisional Magistrate as to why the counting was proceeding at a slow pace. He was informed that "this was so on account of the fact that the number of counting tables was not adequate". At that time, the first or second round of counting was in progress. He had left Fazilka after the completion of counting. The result sheets had been handed over to him. He has also stated that "normally, if any, discrepancy had been found in the total number of ballot papers found in the ballot boxes, Mr. Aggarwal would have informed" him. The witness has also stated that since he had reached Fazilka when the counting was already in progress, he did not know, if there was any dispute regarding the total number of ballot papers actually found in the ballot boxes. RW-15 Mr. Suresh Kumar was the Returning Officer. He has stated that a teletypewriter message dated February 21, 1992, Ex. RW-15/4, had been received from the Election Commission. According to this message, it was inter-alia, alleged that 1000 excess votes were smuggled in, which can materially affect the result and repoll be ordered in Fazilka segment of 13-Ferozepur Parliamentary constituency. He stated that he sent a reply vide teletypewriter message dated February 22, 1992 Ex. RW-15/5 pointing out, inter-alia, that the report of the Returning Officer had been obtained and that "no objection of the type now raised by the applicant was taken up during the course of the counting and the counting went on smoothly. It is incorrect to say that votes counted were

in excess of the total number of registered voters by 1000. Total votes polled in Fazilka assembly segment are 63781 while the number of voters therein is 106,529. The number of votes polled for Parliament in this Assembly segment tally with the votes polled for Legislative Assembly." He has further stated that the petitioner had submitted a representation Ex. PW-15/7 to him. This was rejected vide order dated February 21, 1992. This has been produced as Ex. RW-15/8. According to the witness. The representation had been submitted after the results of the 9 segments of the constituency had been declared but before the result of the Parliamentary Constituency had been announced. He has further stated that as far as he could recall, he had not received any complaint from any one else in connection with the conduct of elections and counting of votes. He was specifically asked if he had received any complaint from any other segment of the constituency alleging that any excess votes had been found which were beyond the registered or the polled votes. His answer was categorical and he stated that he had not received any complaint alleging that the total number of votes found in the ballot boxes were more than the number of ballot papers actually issued at the polling booths. Mr. Ashok Joshi, Joint Secretary in the Ministry of Shipping and Transport, Govt. of India, has appeared as RW-16. He has stated that he was appointed as an Observer by the Election Commission of India in connection with the election to the 13-Ferozepur Parliamentary constituency held in February, 1992. Three segments of this Parliamentary Constituency viz. Abohar, Fazilka and Balauna had been allotted to him. He had visited each of these three places. During the course of his visits, he did not receive any complaint in respect of the actual counting or about any excess votes. This statement was not even challenged in cross-examination.

On a consideration of the entire evidence produced by the petitioner, it appears that a total of 63781 votes had been polled in the Fazilka segment of the constituency. This fact is borne out from the testimony of Mr. Rajender Singh Brar, PW-13, as also from the communication sent by the Returning Officer Ex. PW-15/5. However, besides the ipse dixit of Mr. Rajender Singh Brar that a total of 64781 ballot papers were found, there is nothing on record to establish the exact number of ballot papers found in the ballot boxes. Even though the counting and the election agents of the petitioner have appeared as witnesses and in the normal course of events, they would have noted the number of votes polled in favour of each candidate, as also the number of votes which may have been rejected, they have not given the figures to show that actually 64781 had been counted in favour of the different candidates. If they had given these figures, it could have been clearly established as to how many votes were found in the ballot boxes. Curiously, these figures have not been given. Furthermore, not even an iota of evidence has been led to show that the number of votes found in the ballot boxes was in fact in excess of 63781 votes. In this situation, it is extremely doubtful if any excess votes had been found. Still further, even though Mr. Gurjit Singh, PW-17, who is a practising advocate claims to have submitted an application on the basis of the information given to him by Mr. Rajinder Singh Brar, etc., he has not produced even a copy thereof. Moreover, except the oral testimony of the witnesses, there is no proof of any complaint having been submitted during the course of counting to the Assistant Returning Officer. The only two complaints which have come on record are those submitted to the Chief Electoral Officer, Punjab, Chandigarh, and the Secretary, Election Commission of India, New Delhi, viz. Exhibits RW-15/4 and the one submitted to the Returning Officer Exhibit RW-15/7. With regard to the first representation, the Returning Officer had categorically observed that no objection of the type now raised was taken during the course of counting and that it was incorrect to say that 1000 excess votes had been counted. Similarly in his order on the representation at Ex. RW-15/7, an observation to the same effect has been made. Still further, a perusal of the testimony of Mr. Mangat Ram Agarwal, RW-2 clearly shows that no complaint of any kind was presented to him by any one. He has also specifically denied the suggestion that 1000 ballot papers were found in excess of the votes actually polled or that any objection was raised by M/s. Gurjit Singh and Rajinder Singh Brar.

It is also worthy of notice that while the witnesses produced by the petitioner had an interest in his election, the officials produced by the respondent are totally disinterested persons and were not concerned with the ultimate result of the election. Their testimony is worthy of ordence and inspires confidence. Their evidence clearly belies the petitioner's claim.

In view of the above, it is held that the petitioner has failed to prove that 1000 excess ballot papers in addition to those actually polled were found in the ballot boxes relating to the Fazilka Assembly segment of the Parliamentary constituency. This issue is accordingly decided against the petitioner.

Issue No. 3 :

The petitioner alleges that in the Talalabad segment of the Parliamentary constituency, about 424 ballot papers which were polled in favour of the petitioner were rejected by the Assistant Returning Officer as they were slightly smudged or carried an ink mark. Similarly, 200 ballot papers which were clearly marked by rubber stamp in favour of the petitioner were rejected, as the mark of the rubber stamp was slightly touching the line of the column toward the side of the petitioner. As against this, "about 125 votes which were carrying mark of rubber stamp on two candidates" were counted in favour of the returned candidate viz. respondent No. 1. In support of this claim, reliance has been placed on the oral testimony of the petitioner himself who has appeared as PW-1 as also on the statement of Mr. Paramjit Singh, PW-15. The petitioner has stated that Mr. Paramjit Singh had informed him that a number of votes polled in his favour were being treated as invalid. Approximately, 645 votes polled in his favour were wrongly rejected in spite of an objection having been raised by Mr. Paramjit Singh, PW-15. Mr. Paramjit Singh has stated that he was the counting agent of the petitioner. Mr. Prabhakar was the Assistant Returning Officer. He was sitting with him. The votes were being accepted in favour of Mr. Mohan Singh while those in favour of the petitioner were being rejected arbitrarily. This irregularity was committed in respect of 645 votes. Some times the ink put on the finger of a voter signifying that he had cast his vote smudged the ballot paper and it was treated as good ground for rejection of the ballot paper. Similarly, when the voter had put the stamp on the line, even though the intention had been clearly indicated in favour of the petitioner, the vote was rejected. In cross-examination, he admitted that his daughter was married to the petitioner's son. He further stated that he had seen the votes were smudged with ink. The ballot papers were being brought by the counting staff to the Assistant Returning Officer. He had made a complaint orally and had even offered to make a complaint in writing. The Assistant Returning Officer had remarked that everything was being done correctly, and that there was no reason to complain. On reaching Ferozepur, he had conveyed the factual position to the Petitioner. He also admitted that he had not submitted any complaint in writing till the date of making a statement in Court viz. August 13, 1993. He was also not aware if the petitioner had submitted a written complaint in this behalf.

The respondent had produced Mr. A. S. Prabhakar, the then Assistant Returning Officer, as a witness. He has stated that he did not receive any complaint with regard to the process of counting, the actual counting of votes or any other matter connected therewith in respect of the Talalabad segment of the constituency. He has further stated that he did not receive any complaint even after the process of counting of votes had been completed. In cross-examination, he stated that the ballot papers regarding which the dispute was raised by the representatives of the candidates were put up before him. He had been duly showing the disputed ballot papers to the concerned persons and then deciding the matter. He also stated that the employment Officer and the Special Collector, Agrarian, were also present in the hall where counting was done, and were sitting with him. No complaint was made to them by any of the counting agents.

A perusal of the documentary and oral evidence on record shows that no written complaint suggesting any irregularity either in the arrangements of counting or the actual counting of ballot papers or the acceptance or rejection thereof, has been made by the petitioner or any of his election or counting agents. Even in the representation submitted by the Petitioner which is at Ex. RW-15/7 it has not been suggested

that there was any improper acceptance or rejection of votes in respect of the Jalalabad Segment of the constituency. No particulars of the ballot papers etc. have been given. In such a situation, it appears difficult to accept the allegation of the petitioner that 645 votes polled in his favour were wrongly rejected, or that certain votes were wrongly counted in favour of respondent No. 1. This issue is decided accordingly.

Therefore is one more aspect of the case. Rule 63 of the Rules, inter alia, provides that even after the completion of counting and announcement of the result "a candidate or, in his absence, his election agent or any of his counting agents may apply in writing to the returning officer to recount the votes wither wholly or in part stating the grounds on which he demands such recount". The rule further provides that the returning officer has to decide the matter and may allow it "in whole or in part or may reject into if it appears to him to be frivolous or unreasonable". The decision of the returning officer has to be in writing and contain the reasons

therefor. It is significant to note that even though the petitioner has alleged that 1000 ballot papers were found in excess in the Fazilka Segment of the constituency, and that votes had been illegally rejected and accepted in the Jalalabad Segment of the constituency, no application for recounting of ballot papers had been submitted. This circumstance speaks for itself.

Issue No 4 Relief :

In view of the findings on issues Nos. 1 to 3, there is no merit in the petition. It is accordingly dismissed. In the circumstances of the case, the parties are left to bear their own costs.

Sd/-
J. L. GUPTA, Judge